

FIRST REGULAR SESSION

SENATE BILL NO. 552

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2244S.011

AN ACT

To repeal sections 208.215 and 287.266, RSMo, and to enact in lieu thereof two new sections relating to the MO HealthNet division's authority to collect from third-party payers and workers' compensation beneficiaries.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 208.215 and 287.266, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 208.215 and 287.266, to read as follows:

208.215. 1. MO HealthNet is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a participant receiving public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the participant may be entitled, payments made by the department of social services or MO HealthNet division shall be a debt due the state and recoverable from the liable party or participant for all payments made [in] **on** behalf of the participant and the debt due the state shall not exceed the payments made from MO HealthNet benefits provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the participant, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the participant may be entitled. **Any health benefit plan as defined in section 376.1350, RSMo, third party administrator, administrative service organization, and pharmacy benefits manager, shall process and pay all properly submitted medical assistance subrogation claims or MO HealthNet subrogation claims for a period of**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **three years from the date services were provided or rendered,**
19 **regardless of any other timely filing requirement otherwise imposed by**
20 **such entity, and the entity shall not deny such claims on the basis of**
21 **the type or format of the claim form, or a failure to present proper**
22 **documentation of coverage at the point of sale;**

23 2. The department of social services, MO HealthNet division, or its
24 contractor may maintain an appropriate action to recover funds paid by the
25 department of social services or MO HealthNet division or its contractor that are
26 due under this section in the name of the state of Missouri against the person,
27 corporation, institution, public agency, or private agency liable to the participant,
28 minor or estate.

29 3. Any participant, minor, guardian, conservator, personal representative,
30 estate, including persons entitled under section 537.080, RSMo, to bring an action
31 for wrongful death who pursues legal rights against a person, corporation,
32 institution, public agency, or private agency liable to that participant or minor
33 for injuries, disease or disability or benefits arising from a health insurance plan
34 to which the participant may be entitled as outlined in subsection 1 of this section
35 shall upon actual knowledge that the department of social services or MO
36 HealthNet division has paid MO HealthNet benefits as defined by this chapter
37 promptly notify the MO HealthNet division as to the pursuit of such legal rights.

38 4. Every applicant or participant by application assigns his right to the
39 department of social services or MO HealthNet division of any funds recovered
40 or expected to be recovered to the extent provided for in this section. All
41 applicants and participants, including a person authorized by the probate code,
42 shall cooperate with the department of social services, MO HealthNet division in
43 identifying and providing information to assist the state in pursuing any third
44 party who may be liable to pay for care and services available under the state's
45 plan for MO HealthNet benefits as provided in sections 208.151 to 208.159 and
46 sections 208.162 and 208.204. All applicants and participants shall cooperate
47 with the agency in obtaining third-party resources due to the applicant,
48 participant, or child for whom assistance is claimed. Failure to cooperate without
49 good cause as determined by the department of social services, MO HealthNet
50 division in accordance with federally prescribed standards shall render the
51 applicant or participant ineligible for MO HealthNet benefits under sections
52 208.151 to 208.159 and sections 208.162 and 208.204. A [recipient] **participant**
53 who has notice or who has actual knowledge of the department's rights to

54 third-party benefits who receives any third-party benefit or proceeds for a covered
55 illness or injury is either required to pay the division within sixty days after
56 receipt of settlement proceeds the full amount of the third-party benefits up to
57 the total MO HealthNet benefits provided or to place the full amount of the
58 third-party benefits in a trust account for the benefit of the division pending
59 judicial or administrative determination of the division's right to third-party
60 benefits.

61 5. Every person, corporation or partnership who acts for or on behalf of
62 a person who is or was eligible for MO HealthNet benefits under sections 208.151
63 to 208.159 and sections 208.162 and 208.204 for purposes of pursuing the
64 applicant's or participant's claim which accrued as a result of a nonoccupational
65 or nonwork-related incident or occurrence resulting in the payment of MO
66 HealthNet benefits shall notify the MO HealthNet division upon agreeing to
67 assist such person and further shall notify the MO HealthNet division of any
68 institution of a proceeding, settlement or the results of the pursuit of the claim
69 and give thirty days' notice before any judgment, award, or settlement may be
70 satisfied in any action or any claim by the applicant or participant to recover
71 damages for such injuries, disease, or disability, or benefits arising from a health
72 insurance program to which the participant may be entitled.

73 6. Every participant, minor, guardian, conservator, personal
74 representative, estate, including persons entitled under section 537.080, RSMo,
75 to bring an action for wrongful death, or his attorney or legal representative shall
76 promptly notify the MO HealthNet division of any recovery from a third party and
77 shall immediately reimburse the department of social services, MO HealthNet
78 division, or its contractor from the proceeds of any settlement, judgment, or other
79 recovery in any action or claim initiated against any such third party. A
80 judgment, award, or settlement in an action by a [recipient] **participant** to
81 recover damages for injuries or other third-party benefits in which the division
82 has an interest may not be satisfied without first giving the division notice and
83 a reasonable opportunity to file and satisfy the claim or proceed with any action
84 as otherwise permitted by law.

85 7. The department of social services, MO HealthNet division or its
86 contractor shall have a right to recover the amount of payments made to a
87 provider under this chapter because of an injury, disease, or disability, or benefits
88 arising from a health insurance plan to which the participant may be entitled for
89 which a third party is or may be liable in contract, tort or otherwise under law

90 or equity. Upon request by the MO HealthNet division, all third-party payers
91 shall provide the MO HealthNet division with information contained in a 270/271
92 Health Care Eligibility Benefits Inquiry and Response standard transaction
93 mandated under the federal Health Insurance Portability and Accountability Act,
94 except that third-party payers shall not include accident-only, specified disease,
95 disability income, hospital indemnity, or other fixed indemnity insurance policies.

96 8. The department of social services or MO HealthNet division shall have
97 a lien upon any moneys to be paid by any insurance company or similar business
98 enterprise, person, corporation, institution, public agency or private agency in
99 settlement or satisfaction of a judgment on any claim for injuries or disability or
100 disease benefits arising from a health insurance program to which the participant
101 may be entitled which resulted in medical expenses for which the department or
102 MO HealthNet division made payment. This lien shall also be applicable to any
103 moneys which may come into the possession of any attorney who is handling the
104 claim for injuries, or disability or disease or benefits arising from a health
105 insurance plan to which the participant may be entitled which resulted in
106 payments made by the department or MO HealthNet division. In each case, a
107 lien notice shall be served by certified mail or registered mail, upon the party or
108 parties against whom the applicant or participant has a claim, demand or cause
109 of action. The lien shall claim the charge and describe the interest the
110 department or MO HealthNet division has in the claim, demand or cause of
111 action. The lien shall attach to any verdict or judgment entered and to any
112 money or property which may be recovered on account of such claim, demand,
113 cause of action or suit from and after the time of the service of the notice.

114 9. On petition filed by the department, or by the participant, or by the
115 defendant, the court, on written notice of all interested parties, may adjudicate
116 the rights of the parties and enforce the charge. The court may approve the
117 settlement of any claim, demand or cause of action either before or after a verdict,
118 and nothing in this section shall be construed as requiring the actual trial or final
119 adjudication of any claim, demand or cause of action upon which the department
120 has charge. The court may determine what portion of the recovery shall be paid
121 to the department against the recovery. In making this determination the court
122 shall conduct an evidentiary hearing and shall consider competent evidence
123 pertaining to the following matters:

124 (1) The amount of the charge sought to be enforced against the recovery
125 when expressed as a percentage of the gross amount of the recovery; the amount

126 of the charge sought to be enforced against the recovery when expressed as a
127 percentage of the amount obtained by subtracting from the gross amount of the
128 recovery the total attorney's fees and other costs incurred by the participant
129 incident to the recovery; and whether the department should, as a matter of
130 fairness and equity, bear its proportionate share of the fees and costs incurred to
131 generate the recovery from which the charge is sought to be satisfied;

132 (2) The amount, if any, of the attorney's fees and other costs incurred by
133 the participant incident to the recovery and paid by the participant up to the time
134 of recovery, and the amount of such fees and costs remaining unpaid at the time
135 of recovery;

136 (3) The total hospital, doctor and other medical expenses incurred for care
137 and treatment of the injury to the date of recovery therefor, the portion of such
138 expenses theretofore paid by the participant, by insurance provided by the
139 participant, and by the department, and the amount of such previously incurred
140 expenses which remain unpaid at the time of recovery and by whom such
141 incurred, unpaid expenses are to be paid;

142 (4) Whether the recovery represents less than substantially full
143 recompense for the injury and the hospital, doctor and other medical expenses
144 incurred to the date of recovery for the care and treatment of the injury, so that
145 reduction of the charge sought to be enforced against the recovery would not
146 likely result in a double recovery or unjust enrichment to the participant;

147 (5) The age of the participant and of persons dependent for support upon
148 the participant, the nature and permanency of the participant's injuries as they
149 affect not only the future employability and education of the participant but also
150 the reasonably necessary and foreseeable future material, maintenance, medical
151 rehabilitative and training needs of the participant, the cost of such reasonably
152 necessary and foreseeable future needs, and the resources available to meet such
153 needs and pay such costs;

154 (6) The realistic ability of the participant to repay in whole or in part the
155 charge sought to be enforced against the recovery when judged in light of the
156 factors enumerated above.

157 10. The burden of producing evidence sufficient to support the exercise by
158 the court of its discretion to reduce the amount of a proven charge sought to be
159 enforced against the recovery shall rest with the party seeking such reduction.

160 11. The court may reduce and apportion the department's or MO
161 HealthNet division's lien proportionate to the recovery of the claimant. The court

162 may consider the nature and extent of the injury, economic and noneconomic loss,
163 settlement offers, comparative negligence as it applies to the case at hand,
164 hospital costs, physician costs, and all other appropriate costs. The department
165 or MO HealthNet division shall pay its pro rata share of the attorney's fees based
166 on the department's or MO HealthNet division's lien as it compares to the total
167 settlement agreed upon. This section shall not affect the priority of an attorney's
168 lien under section 484.140, RSMo. The charges of the department or MO
169 HealthNet division or contractor described in this section, however, shall take
170 priority over all other liens and charges existing under the laws of the state of
171 Missouri with the exception of the attorney's lien under such statute.

172 12. Whenever the department of social services or MO HealthNet division
173 has a statutory charge under this section against a recovery for damages incurred
174 by a participant because of its advancement of any assistance, such charge shall
175 not be satisfied out of any recovery until the attorney's claim for fees is satisfied,
176 [irrespective] **regardless** of whether [or not] an action based on participant's
177 claim has been filed in court. Nothing herein shall prohibit the director from
178 entering into a compromise agreement with any participant, after consideration
179 of the factors in subsections 9 to 13 of this section.

180 13. This section shall be inapplicable to any claim, demand or cause of
181 action arising under the workers' compensation act, chapter 287, RSMo. From
182 funds recovered pursuant to this section the federal government shall be paid a
183 portion thereof equal to the proportionate part originally provided by the federal
184 government to pay for MO HealthNet benefits to the participant or minor
185 involved. The department or MO HealthNet division shall enforce TEFRA liens,
186 42 U.S.C. 1396p, as authorized by federal law and regulation on permanently
187 institutionalized individuals. The department or MO HealthNet division shall
188 have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal
189 law and regulation on all other institutionalized individuals. For the purposes
190 of this subsection, "permanently institutionalized individuals" includes those
191 people who the department or MO HealthNet division determines cannot
192 reasonably be expected to be discharged and return home, and "property" includes
193 the homestead and all other personal and real property in which the participant
194 has sole legal interest or a legal interest based upon co-ownership of the property
195 which is the result of a transfer of property for less than the fair market value
196 within thirty months prior to the [participant's] **participants** entering the
197 nursing facility. The following provisions shall apply to such liens:

198 (1) The lien shall be for the debt due the state for MO HealthNet benefits
199 paid or to be paid on behalf of a participant. The amount of the lien shall be for
200 the full amount due the state at the time the lien is enforced;

201 (2) The MO HealthNet division shall file for record, with the recorder of
202 deeds of the county in which any real property of the participant is situated, a
203 written notice of the lien. The notice of lien shall contain the name of the
204 participant and a description of the real estate. The recorder shall note the time
205 of receiving such notice, and shall record and index the notice of lien in the same
206 manner as deeds of real estate are required to be recorded and indexed. The
207 director or the director's designee may release or discharge all or part of the lien
208 and notice of the release shall also be filed with the recorder. The department
209 of social services, MO HealthNet division, shall provide payment to the recorder
210 of deeds the fees set for similar filings in connection with the filing of a lien and
211 any other necessary documents;

212 (3) No such lien may be imposed against the property of any individual
213 prior to the individual's death on account of MO HealthNet benefits paid except:

214 (a) In the case of the real property of an individual:

215 a. Who is an inpatient in a nursing facility, intermediate care facility for
216 the mentally retarded, or other medical institution, if such individual is required,
217 as a condition of receiving services in such institution, to spend for costs of
218 medical care all but a minimal amount of his or her income required for personal
219 needs; and

220 b. With respect to whom the director of the MO HealthNet division or the
221 director's designee determines, after notice and opportunity for hearing, that he
222 cannot reasonably be expected to be discharged from the medical institution and
223 to return home. The hearing, if requested, shall proceed under the provisions of
224 chapter 536, RSMo, before a hearing officer designated by the director of the MO
225 HealthNet division; or

226 (b) Pursuant to the judgment of a court on account of benefits incorrectly
227 paid on behalf of such individual;

228 (4) No lien may be imposed under paragraph (b) of subdivision (3) of this
229 subsection on such individual's home if one or more of the following persons is
230 lawfully residing in such home:

231 (a) The spouse of such individual;

232 (b) Such individual's child who is under twenty-one years of age, or is
233 blind or permanently and totally disabled; or

234 (c) A sibling of such individual who has an equity interest in such home
235 and who was residing in such individual's home for a period of at least one year
236 immediately before the date of the individual's admission to the medical
237 institution;

238 (5) Any lien imposed with respect to an individual pursuant to
239 subparagraph b of paragraph (a) of subdivision (3) of this subsection shall
240 dissolve upon that individual's discharge from the medical institution and return
241 home.

242 14. The debt due the state provided by this section is subordinate to the
243 lien provided by section 484.130, RSMo, or section 484.140, RSMo, relating to an
244 attorney's lien and to the participant's expenses of the claim against the third
245 party.

246 15. Application for and acceptance of MO HealthNet benefits under this
247 chapter shall constitute an assignment to the department of social services or MO
248 HealthNet division of any rights to support for the purpose of medical care as
249 determined by a court or administrative order and of any other rights to payment
250 for medical care.

251 16. All participants receiving benefits as defined in this chapter shall
252 cooperate with the state by reporting to the family support division or the MO
253 HealthNet division, within thirty days, any occurrences where an injury to their
254 persons or to a member of a household who receives MO HealthNet benefits is
255 sustained, on such form or forms as provided by the family support division or
256 MO HealthNet division.

257 17. If a person fails to comply with the provision of any judicial or
258 administrative decree or temporary order requiring that person to maintain
259 medical insurance on or be responsible for medical expenses for a dependent
260 child, spouse, or ex-spouse, in addition to other remedies available, that person
261 shall be liable to the state for the entire cost of the medical care provided
262 pursuant to eligibility under any public assistance program on behalf of that
263 dependent child, spouse, or ex-spouse during the period for which the required
264 medical care was provided. Where a duty of support exists and no judicial or
265 administrative decree or temporary order for support has been entered, the
266 person owing the duty of support shall be liable to the state for the entire cost of
267 the medical care provided on behalf of the dependent child or spouse to whom the
268 duty of support is owed.

269 18. The department director or the director's designee may compromise,

270 settle or waive any such claim in whole or in part in the interest of the MO
271 HealthNet program. Notwithstanding any provision in this section to the
272 contrary, the department of social services, MO HealthNet division is not required
273 to seek reimbursement from a liable third party on claims for which the amount
274 it reasonably expects to recover will be less than the cost of recovery or for which
275 recovery efforts will not be cost-effective. Cost-effectiveness is determined based
276 on the following:

- 277 (1) Actual and legal issues of liability as may exist between the [recipient]
278 **participant** and the liable party;
- 279 (2) Total funds available for settlement; and
- 280 (3) An estimate of the cost to the division of pursuing its claim.

287.266. 1. As used in this section, the following terms mean:

2 (1) "Provider", any individual, corporation, public or private entity that
3 has entered into an agreement with the state to provide any service set out in
4 section 208.152, RSMo, and subsequent amendments;

5 (2) "Person eligible for public assistance", any individual who is or was
6 eligible for medical assistance under the laws of this state.

7 2. Payments made **by the department** to or on behalf of a person
8 eligible for public assistance as the result of any compensable injury, occupational
9 disease or disability as defined by this chapter **shall be presumed to be**
10 **benefits incorrectly paid for purposes of 42 U.S.C. 1396p**, shall be a debt
11 due the state, and recovery of same shall be a recognized action pursuant to this
12 chapter. **Any settlement approved or judgment issued by the**
13 **administrative law judge shall constitute a judgment of a court on**
14 **account of benefits incorrectly paid under 42 U.S.C. 1396p.**

15 3. The state shall have a lien upon any funds owed by any employer that
16 are or might be due under any insurance agreement or self-insurance authority
17 in effect at the time the medical expense or any portion thereof was paid by the
18 department of social services or its designated division.

19 4. **Any settlement approved or judgment issued by the**
20 **administrative law judge shall require full repayment of all moneys**
21 **paid by the department to or on behalf of a person eligible for public**
22 **assistance as the result of any compensable injury, occupational**
23 **disease, or disability as defined by this chapter. All moneys repaid to**
24 **the department shall be allocated as medical expenses in the settlement**
25 **or judgment.** The state shall have a right of subrogation to any funds for

26 **medical expenses** owed to or received by the employee or any person,
27 corporation, public agency or private agency acting on his behalf notwithstanding
28 any other provisions of this chapter. **The amount of medical expenses**
29 **authorized by the administrative law judge shall be greater than or**
30 **equal to the debt due the state. In no case shall the debt due the state**
31 **be reduced.**

32 5. The department [of social services] or its designated division may
33 maintain an appropriate action to recover funds due under this section pursuant
34 to the workers' compensation law or the second injury fund, which includes the
35 exercise of all appeal rights afforded by the laws of this state.

36 6. The department shall have a right to recover the full amount of its
37 payments when payments are made to a provider under this chapter if the
38 payments were made on behalf of a person eligible for public assistance for an
39 injury, occupational disease, or disability which is compensable under this
40 chapter **notwithstanding the injured employee's selection of a provider**
41 **or direction of care.**

42 7. This debt due the state shall be subordinate only to the fee rights of the
43 injured employee's attorney pursuant to this chapter, and the state shall not be
44 required to pay any portion of the fees or costs incurred by the employee or the
45 employer.

46 8. Application for and acceptance of public assistance made to or on behalf
47 of the injured employee shall constitute an assignment of rights to the
48 department of social services for reimbursement of funds expended by the
49 department of social services in the treatment of a compensable injury.

50 9. **The employer and attorney for an injured worker who is**
51 **eligible for and receives public assistance as provided by sections**
52 **208.151 to 208.159, RSMo, and section 208.162, RSMo, as the result of an**
53 **occupational or work-related incident shall give the department of**
54 **social services thirty days notice of any institution of a proceeding,**
55 **settlement, or judgment. No settlement or judgment may be approved**
56 **or issued by the administrative law judge without the filing of a release**
57 **from the MO HealthNet division evidencing full repayment of all**
58 **moneys paid by the department to or on behalf of a person eligible for**
59 **public assistance as the result of any compensable injury, occupational**
60 **disease, or disability as defined by this chapter. [The] Any attorney for**
61 **the injured worker shall also** notify the department of social services upon

62 representation of each client who was eligible for public assistance as provided
63 by sections 208.151 to 208.159, RSMo, and section 208.162, RSMo, prior to, during
64 or subsequent to the date of injury, that the attorney was retained to pursue the
65 client's legal rights related to the compensable injury.

66 10. The administrative law judge, pursuant to authority granted under
67 section 287.610, shall apportion the debt due the state between the injured
68 worker and the injured worker's employer or their designated representatives **in**
69 **accordance with state and federal law** when an agreement cannot be
70 reached regarding the respective liability for money expended by the department
71 of social services on behalf of the injured employee, but in no case shall the debt
72 due the state be reduced.

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Bill

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